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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,904	07/11/2001	Steven B Dunn	MBI-1064	9657

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EXAMINER	
GRAVINI, STEPHEN MICHAEL	
ART UNIT	PAPER NUMBER
3743	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/902,904	DUNN ET AL.	
	Examiner	Art Unit	
	Stephen M. Gravini	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 April 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *9,10,19,20 and 29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *9,10,19,20 and 29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11 July 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *20020405*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

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5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Prosecution is hereby reopened. A new ground of rejection is set forth above. A Technology Center Director or designee must personally approve the new ground(s) of rejection by signing below:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claim 29 is rejected under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite the following means plus function limitation: mounting means for mounting pegs with location means for locking said pegs.

The claim limitation uses the term "means for" which triggers a rebuttable presumption that 35 USC § 112, ¶ 6, does not apply. However, this presumption may be rebutted if the claim limitation uses a term that is not an art-recognized structure to perform the claimed function, the term is modified by functional language, and the term is not modified by sufficient structure or material for performing the claim function. *See Ex parte Rodriguez*, 92 USPQ2d 1395, 1404-1406 (Bd. Pat. App. & Int. 2009).

Here, appellant's claim limitation begins with a term followed by functional language and the term is not modified by sufficient structure or material for performing the claimed function. Furthermore, the specification does not provide a description sufficient to inform one

of ordinary skill in the art the meaning of the term; and the term is not an art-recognized structure to perform the claimed function. Accordingly, the limitation invokes 35 USC § 112, ¶ 6.

35 USC § 112, ¶ 6, requires such claim to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. "If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112." *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer. *Aristocrat Technologies, Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function. *Aristocrat*, 521 F.3d at 1338, 86 USPQ2d at 1242.

In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function: The figures generally show mounting means for mounting pegs, but not in enough detail to meet the requirements of 35 USC 112, sixth paragraph.

However, the specification and drawings do not disclose sufficient corresponding structure for performing the claimed function. The specification does not provide the structure for the claimed mounting means for mounting pegs with location means for locking pegs therefor appellant have failed to adequately describe sufficient structure for performing the functions claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kassanchuk (4238035). Kassanchuk shows an apparatus for drying and storing an article, comprising: a tray having a bottom face (underside of items 13) that is adapted to be supported by an underlying surface and an upper face (upperside of items 13); bottle support means for supporting a baby bottle (11b); and disk holding means (7, figs. 2 and 3, col. 3, lines 26-33), connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect, whereby baby bottle disks are and stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried (fig. 2), said disk holding means comprises an upstanding boss member that is raised from said upper face of said tray (33, 11a, structure above turn 35), and a plurality of disk-receiving slots defined in said boss member (51, fig. 3, slot divided by first arms 11a into a plurality of slots).

Claims 19-20 are rejected under 35 U.S.C. 102(b) as being unpatentable over Gates (US 2,197,178). The "means for" language is construed to invoke the sixth paragraph of the 35 USC 112, because of its recitation being modified by functional language and not modified by sufficient acts, structure, or material. The claims are reasonably and broadly construed, in light of the accompanying specification, to be disclosed by Gates as comprising:

a tray **1** having a bottom face that is adapted to be supported by an underlying surface and an upper face (figure 2, page 1 line 8);

bottle support means **15** for supporting a baby bottle (figure 1, page 2 line 6); and

disk holding means **15**, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect, whereby baby bottle disks are and stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried (figure 1, page 2 line 6 and lines 61-70). Gates also discloses the claimed disk holding means comprising an upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member (figure 1, page 2 line 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slipp in view of Kassanchuk (4238035). Slipp discloses an apparatus for storing an article, comprising: a tray (a and b) having a bottom face that is adapted to be supported by an underlying surface, and an upper face (figs. 1 and 3 and page 1 lines 73-78); and a plurality of pegs (c and d) extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article (figs. 1 and 4, page 1, lines 79-80, and page 2, lines 9-10), each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes (figs. 3 and 4, page 1, lines 17-28, and page 2, lines 21-26, page 1, lines 49-51). Slipp does not disclose disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect; said disk holding means comprises an upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member. Kassanchuk (4238035) teaches disk holding means (7, figs. 2 and 3, col. 3, lines 26-33), connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect (fig. 2); said disk holding means comprises an upstanding boss member that is raised from said upper face of said tray (33, 11a, structure above turn 35), and a plurality of disk-receiving slots defined in said boss member (51, fig. 3, slot divided by first arms 11a into a plurality of slots) for the purpose of elevating baby bottle discs to assist in drying. It would have

been obvious to one of ordinary skill in the art to modify Slipp by including disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect; said disk holding means comprises an upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member as taught by Kassanchuk for the purpose of elevating baby bottle discs to assist in drying so that multiple component parts of the bottle can be dried at the same time which would provide greater utility and ease of use to the consumer as all of the components would be dried at one location and the possibility of loss of components is reduced. The applicant is merely combining prior art according to known methods to yield predictable results. In this case, the technique of elevating the discs and drying multiple components of the bottle in one place is known, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slipp in view of Kassanchuk (4238035). Slipp discloses an apparatus for drying and storing an article, comprising: a tray (a and b) having a bottom face that is adapted to be supported by an underlying surface and an upper face (figs. 1 and 3 and page 1 lines 73-78); bottle support means for supporting a baby bottle(figs. 1 and 4, page 1, lines 79-80, and page 2, lines 9-10). Kassanchuk teaches and disk holding means (7, figs. 2 and 3, col. 3, lines 26-33), for holding baby bottle disks in a location that is isolated from areas of said ... in which liquid may collect, whereby baby bottle disks are and stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried (fig. 2), said disk holding means comprises an upstanding boss member that is raised from said upper face of said ... (33, 11a, structure above

turn 35), and a plurality of disk-receiving slots defined in said boss member (51, fig. 3, slot divided by first arms 11a into a plurality of slots) the purpose of elevating baby bottle discs to assist in drying. It would have been obvious to one of ordinary skill in the art to modify Slipp by including and disk holding means, for holding baby bottle disks in a location that is isolated from areas of said ... in which liquid may collect, whereby baby bottle disks are and stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried, said disk holding means comprises an upstanding boss member that is raised from said upper face of said ..., and a plurality of disk-receiving slots defined in said boss member as taught by Kassanchuk for the purpose of elevating baby bottle discs to assist in drying so that multiple component parts of the bottle can be dried at the same time which would provide greater utility and ease of use to the consumer as all of the components would be dried at one location and the possibility of loss of components is reduced. The applicant is merely combining prior art according to known methods to yield predictable results. In this case, the technique of elevating the discs and drying multiple components of the bottle in one place is known, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way.

Declarations

The reissue declaration filed 7/02/2004 is defective because it does not specifically identify an error that supports the reissue application. Applicant states at page 1 of the declaration that US Patent 6,038,784 is invalid because applicant "claimed less than we were entitled to claim." However, applicant does not specifically describe the error (e.g., identification of the specific claim(s) and the specific claim language wherein lies the error that is now corrected in the reissue application). See MPEP 1414(II). Applicant's described "errors"

in paragraphs (a) – (f) are not errors that can support the reissue application because they do not identify an error in the original patent which would cause the patent to be wholly or partly inoperative or invalid for reasons under 35 USC 251. Specifically, changing "nipple support members" to "ring support members" and including a literal antecedence for the concept of a predetermined plane of rotation in which pegs are constrained to move are not "errors" that show that Applicants claimed more or less than they had a right to claim (i.e., the described "errors" do not change the scope of the original patent). Furthermore, the "predetermined plane of rotation" was either in the original specification or could not be added as new matter in this reissue. Spelling and minor corrections, which do not cause the patent to be wholly or partly inoperative or invalid for reasons in 35 U.S.C. § 251 do not support a reissue application. Finally, Applicants do not specifically describe any errors in the original patent claims with respect to unpatentability over the prior art or under 35 U.S.C. § 112.

Copy of '784 Patent

Applicant should submit a copy of the printed patent for which reissue is requested. See MPEP 1410 and 37 CFR 1.173.

The drawing sheets submitted 7/11/2001, 7/10/2002, 2/6/2003, and 7/02/2004 do not comply with 37 CFR 1.173 (a)(2) because they are not copies from the '784 patent. Similarly, there is no complete set of a copy of the specification, including the front page with abstract and claims, from the original patent.

Amendments

Drawing Amendments

The amended drawing sheet submitted 7/02/2004 does not comply with 37 CFR 1.173(b)(3). Here, the drawing amendment sheet that contains the amended figure should be a copy of the drawing sheet from the '784 patent labeled "Replacement Sheet" in addition to identifying the amended Figure 4 as "Amended."

Specification Amendments

Amendments to the specification should be made in accordance with 37 CFR 1.173. Amendments submitted 2/06/2003 and 7/16/2002 include some paragraphs with no underlining or bracketing and therefore are unclear what is being added or deleted in these paragraphs with respect to the original patent. It is suggested that applicant only submit paragraphs that have changes (additions identified by underlining and deletions identified by bracketing) relative to the original patent.

Litigation

Applicants are reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 6,038,784 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicants are further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Each prior art reference cited with this action can be used to reject the claimed invention under current Office practice.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth B. Rinehart can be reached on 571 272 4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen M. Gravini/
Primary Examiner, Art Unit 3743

/DONALD T HAJEC/
Director, Technology Center 3700